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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

May 25, 2004

AO-04-09

Peter Johnson-Staub
Assistant Town Administrator
Town of Yarmouth
1146 Route 28
South Yarmouth, Massachusetts 02664-4492

Dear Mr. Johnson-Staub:

This letter is in response to your April 8, 2004 request for an advisory opinion regarding certain policies that the Town of Yarmouth is contemplating passing in order to regulate political activities on or near town-owned property.

QUESTION:

You have asked whether it would be permissible under the campaign finance law for the Town to adopt the following policies:

1. No person shall conduct political campaign activities within a Town-owned building. Prohibited activities include fundraising, distributing political leaflets, soliciting signatures, and soliciting political support.
2. No political campaign literature or nomination papers shall be posted in or on a Town-owned building. No political campaign literature or nomination papers shall be placed on a counter or information table within a Town-owned building or on Town-owned land.
3. No person shall conduct political campaign activities on Town-owned land or within 150 feet of the entrance to a Town-owned building or facility with the following two exceptions. Prohibited activities include fundraising, distributing political leaflets, soliciting signatures, and soliciting political support. The two exceptions are:
 - a. Political activities, excluding solicitation of funds, shall be permitted at the entrance of Town Hall only after 5:00PM on weekdays and at any time on weekends.
 - b. Political activities, excluding solicitation of funds, shall be permitted at the entrance to the Transfer Station at any time.

ANSWER:

Yes, the Town of Yarmouth may, consistent with the campaign finance law, adopt policies regarding the use of municipal facilities for political purposes that are more restrictive than what is required under the law, so long as such policies are equally applied.

DISCUSSION:

In Anderson v. City of Boston, 376 Mass. 178 (1978) appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence the vote on a statewide ballot question. In accordance with Anderson, public resources may not be used to support or oppose political parties, candidates or ballot questions.

The court further stated that “the city’s use of telephones and printed materials provided by public funds, *and its use of facilities paid for by public funds*, would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200 (emphasis added). Accordingly, this office has consistently determined that a public entity may not allow a candidate’s campaign to make use of a public resource, such as a municipally owned building, for political purposes unless other candidates have the same access, upon request, to do so. (See OCPF Interpretive Bulletin IB-91-01).

A governmental entity may, however, choose a more restrictive approach than what is required under the campaign finance law, and prohibit or limit access to public resources, so long as such restrictions are equally applied. Therefore, a policy stating that political activities may not be conducted on municipal property, applied equally to all candidates, would be consistent with the campaign finance law.

In addition, M.G.L. c.55, §14 states, in pertinent part, that “[n]o person shall in any building or part thereof¹ occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for “any political purpose.” The policies set forth in your letter would also be consistent with Section 14 of the campaign finance law.

This opinion has been rendered solely on the basis of the representations set forth in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

¹ In your request you ask if a policy restricting political activities within “town-owned buildings” would comply with the campaign finance law. Section 14 applies, however, to buildings that are “occupied for municipal purposes” regardless of ownership.